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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Tariffs Implementing	)	CC Docket No. 97-250
Access Charge Reform	)	DA 98-385
	)	CCB/CPD 98-12
	)	

COMMENTS OF THE RURAL TELEPHONE COALITION ON MCI PETITION FOR PRESCRIPTION

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SUMMARY

MCI has filed an untimely petition for reconsideration which is primarily a wish requesting the Commission to revise rules which it has recently adopted and are now being implemented. MCI has not explained why its concerns are not properly and most efficiently addressed in the normal course of this proceeding. The Petition should be dismissed and incorporated into this Docket.

While this proceeding directly applies to price cap LECs, the same issues will effect the rate-of-return LECs. The RTC has been an active participant in CC Dockets 97-181(Defining Primary Lines) and 96-262 (Access Reform). Rate-of- return carriers (such as the RTC's members) have a significant interest in the resolution of this proceeding because of the expectation that the Commission may propose similar requirements in the forthcoming rulemaking regarding access charges for non-price cap carriers. Rate-of-return carriers are also interested in the resolution of issues concerning the definition of primary and secondary lines, and have participated actively in the pending proceeding on that issue.

A primary line decision should be reached promptly in CC Docket 97-181 and the primary-secondary line distinction should not be resolved in this proceeding.

MCI cannot blame ILECs for its decision to recover PICCs and USF through itemized end user charges. Contrary to MCI's claim in some customer bills, the Commission has not required MCI to recover PICCs and universal service contribution costs passed through by LECs as itemized end user charges. The Commission decided in the Universal Service Order to "permit recovery of universal service contributions through the contributing carrier's interstate rates" (¶773). However, it did not tell or even authorize IXCs to pass through ILEC contributions to end users. Chafing under criticism for its initial manner of recovering the PICC

from its customers, MCI has cobbled together a list of supposed LEC shortcomings in implementing the Access Reform Order to use as an excuse for forcing the LECs to collect its interstate PICC. Although the Commission adopted PICCs to substitute flat charges for the per minute CCL cost recovery the IXCs have bemoaned for years, MCI now wants the interstate PICCs on LECs' bills. This plan, of course, would amount to the same thing as raising the SLC beyond the level the Commission has found would be appropriate in the Access Charge and Universal Service orders, both now before appeals courts.

The Commission and telecommunications providers have plenty to do without revisiting what has already been decided and is on reconsideration or before appellate courts in a collateral proceeding. It should rebuff MCI's attempt here to relitigate the Universal Service and Access determinations, including PICC and contribution pass through, well before allowing enough time to see how the market would function without additional Commission micro-management of ILEC access cost recovery.

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Comments of the Rural Telephone Coalition
On MCI Petition for Prescription

The Rural Telephone Coalition (RTC) hereby files its comments in response to the Emergency Petition for Prescription (Petition) filed by MCI Telecommunications Corporation (MCI) and pursuant to the Commission's Public Notice, DA 98-385, released February 26, 1998. The RTC is comprised of three associations of incumbent local exchange carriers (ILECs), the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). Together, the associations represent more than 850 ILECs throughout the United States. Although the issues raised by MCI relate to the tariffs of price cap carriers, the same issues are raised in CC Dockets 97-181(Defining Primary Lines) and 96-262 (Access Reform) in which the RTC has been an active participant.

I. Introduction

A. In Addition to a General Plea to Revisit the *Access Reform* and *Universal Service* Orders, MCI Asks the Commission To:

- Eliminate the distinction between primary and non-primary lines
- Require LECs to collect PICCs directly from their subscribers until "they can provide all necessary information to IXCs in advance of billing"
- Prescribe a standard, independently verifiable definition of primary and non-primary lines
- Require ILECs to provide auditable line count information
- Prescribe rules regarding "de-PICing"
- Standardize the date used to assign PICC to a particular IXC
- Require ILECs to provide IXCs with the amount of "USF pass through" in access bills

MCI claims these requirements are necessary to foster competition in the access and local exchange markets, which is allegedly not developing because of the 8th Circuit Court decision and access charges in excess of forward-looking economic costs. MCI complains that the Commission's decision to require price cap ILECs to recover some common line costs through flat rate charges is impractical, because some customers make no long distance charges in a given billing cycle.

B. The Issues Raised by MCI Are Either Governed by Existing Rules or Should Be Considered in the Normal Course of this Docket.

The MCI Petition raises numerous issues relating to the implementation of the new PICC charges required by the Commission's Access Reform Order[1] and contribution to universal service support required by the Universal Service Order.[2] A substantial part of MCI's wish list is in effect a request that the Commission revise rules which it has recently adopted. Such questions must be addressed by a timely petition for reconsideration or, where appropriate, a new

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[1] Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982; *Order on Reconsideration*, 12 FCC Rcd 10119; *Second Order on Reconsideration,* 12 FCC Rcd 16606 (1997)

[2] Universal Service Order, *Report and Order,* 12 FCC Rcd 8776. Explicit support mechanisms for maintaining affordable local rates, Federal-State Board on Universal Service, CC Docket No. 96-45.

petition for rulemaking. To the extent MCI is seeking resolution within the context of implementing the rules, it has not explained why such questions are not properly and most efficiently addressed in the normal course of this proceeding. The Petition should be dismissed and incorporated into the Docket without "emergency" preference.

C. MCI's Petition Is an Untimely Petition for Reconsideration.

While MCI has styled its requests as an emergency petition, its filing actually seeks reconsideration of Commission access and universal service determinations well after the time for reconsideration has expired. MCI expressly demands (p. 2) that the Commission use this investigation of tariffs to "re-visit and significantly modify its Access Reform policies...." Its basic rationale is that competition has already failed and access charges remain higher than forward looking economic costs. It also speculates that there will be no significant competition driven progress "between now and 2001, the period the Commission allotted to the market-based access reform approach." (Ibid.)

MCI's demand does not present any new facts or arguments that it could not have made in requests for reconsideration or in its pursuit of judicial review. Indeed, MCI has neglected to disclose here that its demand for immediate prescription of access rates based on the Commission's forward looking economic cost theories duplicates its pending appeal in the Eighth Circuit. Its appeal challenges the Commission's reliance on marketplace forces rather than prescription in the Access Reform Order.[3] In going to court, MCI chose to submit the prescription issue to the court's jurisdiction under section 204(b)-(c). This petition is an effort to pursue Commission reconsideration and judicial review simultaneously, which the law and sound

[3]Supra, n. 1.

practice do not permit[4] and which flouts the judicial process.

MCI does not demonstrate sufficient new or changed facts, events or circumstances to open the door now to tardy reconsideration. The Commission was well aware that the marketplace approach would not make immediate changes and it decided to review conditions in 2001. MCI does not show why its dissatisfaction with supposed ILEC recalcitrance doom access competition. The transcript of the Commission's January 29, 1998 en banc investigation of competition under the 1996 Act indicates that all five Commissioners think competition is developing, but that adequate time is necessary for the process to work.[5]

D. The Issues Raised Are of Concern to Rate of Return ILECs.

Although the requirement for PICC charges is currently applicable only to price cap carriers, rate-of-return carriers (such as the RTC's members) have a significant interest in the resolution of this proceeding because of the expectation that the Commission may propose similar requirements in the forthcoming rulemaking regarding access charges for non-price cap carriers. Rate-of-return carriers are also interested in the definition of primary and secondary lines, and have participated actively in the pending proceeding on that issue.[6]

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[4] BellSouth Corp v. FCC, 17 F 3rd 1487 (D.C. Cir 1994)

[5] For example, Commissioner Ness shared Commissioner Furchtgott-Roth's optimism that the Act is working, pointing to the testimony that $3.5 Billion has already been invested in competitive infrastructure, but recognizing that competition takes time to develop. Transcript available at http://www.fcc.gov/enbanc/012998/eb012988.html.

[6] See, Comments and Reply Comments of the Rural Telephone Coalition in CC Docket 97-181, September 25 and October 9, 1997, respectively. In that Docket the Commission specifically asked "...whether the various proposals set forth in this NPRM for determining, identifying and verifying primary lines for price cap ILECS could also be applied for rate-of-return ILECs if, in a future proceeding, the Commission concludes that all ILECs should assess SLCs and PICCs that are higher for secondary lines." Defining Primary Lines, Notice of Proposed Rulemaking, 12 FCC Rcd 13647, 13650.

In its Petition, MCI mixes implementation issues with arguments which attempt to undo the fundamental decisions which have already been made regarding the recovery of the costs of providing interstate access by boldly attempting to throw the entire cost of the local loop onto the backs of the local ratepayer which is plainly unacceptable. Regarding implementation issues, the RTC does agree as a general principle that IXCs are entitled to be billed in a manner that is verifiably correct. It should be kept in mind that putting this principle into practice will prove difficult and should be resolved through industry cooperation, not FCC fiat.

II MCI's Requests for Prescription Contrary to the Commission's Rules Should Be Dismissed, and a Primary Line Decision Reached Promptly in CC Docket 97-181

A. The Primary-secondary Distinction Should Not Be Resolved in this Proceeding.

MCI requests the "immediate" elimination of the distinction between primary and non-primary lines. While the RTC agrees substantively with this position (for different reasons[7]), a further rulemaking is required because the distinction has been adopted in the rules. A tariff prescription is insufficient because the Common Carrier Bureau has already explicitly so ruled in this proceeding.[8]

Despite its request that the distinction be eliminated, MCI goes on to ask the Commission to prescribe definitions of primary and non-primary lines. While the RTC recognizes that the Commission may prescribe tariff language where the carrier's wording is not clear and make that prescription subject to the ultimate outcome of the pending rulemaking, we are concerned that the practical impact of such action is to pre-judge the results of the

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[7]Reply Comments of the RTC in CC Docket 97-181, October 9, 1997, 1-2. The RTC noted similar arguments by the New York State Telecommunications Association.

[8]*Order Designating Issues for Investigation and Order on Reconsideration,* Tariffs Implementing Access Charge Reform, DA 98-151, rel. Jan. 28, 1998, n. 20.

rulemaking. A tariff prescription involves a smaller universe of interested parties and is decided under different rules and should not be used to resolve basic public policy questions. The best course of action is therefore for the Commission to promptly resolve the outstanding rulemaking.

If the distinction is nevertheless retained, however, there is no excuse for MCI to blame LECs for the Commission's delay in defining the terms. "Primary lines" and single line business lines — like the old "main station" concept — are terms that conflict with a competitive and deregulatory environment. For example, only the customer -- not the ILEC -- can know what other carriers' lines or services that a residential or business customer obtains, let alone what connection is "primary." The RTC explained the many problems posed by this unworkable distinction in CC Docket No. 97-181.[9]

Issues regarding IXC requests to de-PIC a subscriber line and selection of a standardized date for monthly assignment of PICC will require the development of a record. It is likely that there are many factors which must be considered and these factors are not all obvious. The de-PIC process will probably require customer permission and notification. LECs cannot be placed between the IXC and its long distance customer. Also, it is not clear that there is a need for a standard PICC date for the month. All service order activity and related billing is usually related to the service date with a pro-rating of the bill. Perhaps this is feasible for the PICC or perhaps the PICC should be based on the average number of subscribers PIC'd for the month.

B. MCI Cannot Blame ILECs for its Decision to Recover PICCs and USF Through Itemized End User Charges.

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[9] The RTC argued in its comments in CC Docket 97-181 (p3) that the proposal to charge end users different rates depending upon distinctions that would invade subscriber privacy, was incapable of fair implementation and was bad public policy. The MCI Petition illustrates the merits of this argument.

Contrary to MCI's claim in some customer bills, the Commission has not required MCI to recover PICCs and universal service contribution costs passed through by LECs as itemized end user charges.[10] To be sure, the Commission decided in the Universal Service Order to "permit recovery of universal service contributions through the contributing carrier's interstate rates" (¶773). However, it did not tell or even authorize IXCs to pass through ILEC contributions to end users as universal service fees or surcharges. Instead, to "maintain and promote the affordability of basic residential service," the Commission "declin[ed] to create a single interstate fee that would be paid by basic residential dialtone subscribers" (ibid.).

MCI has cobbled together a list of supposed LEC shortcomings in implementing the Access Reform Order to use as an excuse for forcing the LECs to collect its interstate PICC. Although the Commission adopted PICCs to substitute flat charges for the per minute CCL cost recovery, which the IXCx have bemoaned for years, MCI now wants the interstate PICCs on LECs' bills. This plan, of course, would amount to the same thing as raising the SLC beyond the level the Commission has found would be appropriate in the Access Charge and Universal Service orders, both now before appeals courts. Whether this new ILEC charge were added to the SLC (because it would be legally and factually indistinguishable) or forced on LECs as a second "interstate" line charge for interstate access, the result would be the same — an increase in the interstate fees "paid by basic residential dialtone customers" to the LEC.[11] Thus, acceding

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[10] The Universal Service Decision (¶829) states that "carriers will be permitted, but not required, to pass through their contributions to their interstate access and interexchange customers," provided that carriers may shift only an "equitable share" to "any customer or group of customers."

[11] Ironically, MCI grumbles inconsistently and wholly inaccurately (n.14) that the Commission has "plac[ed] IXCs in the position of tax collector for ILEC excessive access fees and universal service costs," as it tries to force ILECs to collect MCI's fair share of access and

MCI's scheme would break the Commission's promise to the public to "avoid a blanket increase in charges for basic residential dialtone service."[12] If MCI cannot implement the PICC plan, it should be asking to return the PICC cost recovery to the Carrier Common Line charge.

That the PICC charge relates to MCI customers in "zero-usage" months is simply a function of flat charge recovery. Indeed, MCI recognizes (n.17) that PICCs reflect a "straight-forward economic relationship... namely, that it costs money to provide long distance services even to low usage customers."[13] The PICC rate does not, contrary to MCI's claim (Pet. p 15) recover new access costs,[14] but merely replaces a per-minute charge with a per-line charge. Whatever the implementation problems of this charge, it does not produce any new carrier's carrier revenue for the price-cap LECs nor any revenue at all for rate-of-return LECs.

III. USF Contribution Amount Should Not Be Required as a Line Item on Access Bills.

MCI and other IXCs have demonstrated their desire to use their customer bills to make a political statement through the use of charges, such as "carrier line charge" or "national access fee"[15]. Its request that ILECs itemize their universal service contribution costs in their access bills as a line item for each element is unreasonable. ILECs fully justify these and other costs

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universal service costs.

[12] Universal Service Order, 12 FCC Rcd at 9190,9199.

[13] The Commission has made the ILECS recover SLCs from interstate customers in "zero-use" months since their inception. See, NARUC v FCC, 787 F.2d 1095 (D.C. Cir. 1984), *Cert. Denied* 469 U.S. 1227 (1985).

[14] MCI, as well as other IXCs have misrepresented to the public that PICCs are "new" costs to them. See, letter, William J. Kennard to Bert Roberts, February 26, 1998, (Kennard letter).

[15] See, Kennard letter, supra.

with their tariff filings and should not be required to itemize theses or other costs in access bills.

MCI's demand for detailed universal service pass through information broken down by rate element again seeks to reargue Universal Service determinations in the wrong proceeding and forum. In Universal Service (¶854), the Commission held that "an end user surcharge is not necessary to ensure that contributions be explicit," as each carrier will know what it is contributing. For carriers that elect to pass through their contributions, the decision mandated truthful disclosure, but warned (¶855): "Unlike the SLC, the universal service contribution is not a federally mandated direct end-user surcharge," therefore, it is inaccurate to label it as a surcharge. Customers, whether end users or other carriers such as MCI, need not be told how the contributions paid by ILECs are passed through in their rates. In contrast, the requirement for "explicit" identification of universal service support appears only in §254(e) and applies only to federal support received by eligible carriers, not to another carrier's contribution recouped, in turn, from its customers.

IV Conclusion

This rather strange pleading has the appearance of distracting attention from MCI's misleading characterization of charges passed on to customers as "National Access Fee." The Commission should rebuff MCI's attempt here to relitigate the Universal Service and Access determinations, including PICC and contribution pass through, well before allowing enough time to see how the market would function without additional Commission micromanagement of ILEC access cost recovery. Universal Service points out (¶855) that "carriers retain the flexibility to structure their recovery of the costs of universal service in many ways, including creating new pricing plans subject to monthly fees." MCI is simply wrong that there is no

efficient way to recover flat charges from low use customers or that IXCs are "harmed" by recovering their own flat access payments, in a way that they themselves may devise, from their own presubscribed customers. The Commission should abandon the primary and non-primary line distinction in the appropriate proceeding as soon as possible. However, there is no reason to make ILECs define that troublesome term or recover additional, thinly disguised interstate SLCs or "other" end user charges such as PICCs from ILEC customers to fund IXCs' interstate obligations.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the Rural Telephone Coalition on MCI Petition for Prescription in CC Docket No. 97-250/ CCB/CPD 98-12 was served on this 18th day of March 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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